

PT 96-38
Tax Type: PROPERTY TAX
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

EVELYN OGIELA,)	
APPLICANT)	Docket No: 94-16-382
)	
)	
v.)	Real Estate Exemption
)	for 1994 Tax Year
)	
DEPARTMENT OF REVENUE)	P.I.N.: 16-02-411-019
STATE OF ILLINOIS)	
)	Alan I. Marcus,
)	Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

SYNOPSIS:

This matter comes on for hearing pursuant to Evelyn Ogiela's (hereinafter referred to as the "applicant" or "Ogiela"), protest of the Illinois Department of Revenue's, (herein referred to as the "Department"), denial of Ogiela's request for exemption from 1994 real estate taxes pursuant to 35 ILCS 200/15-5 *et seq.*¹ At issue is whether the above-captioned parcel qualifies for exemption as a

1. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1994 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Property Tax Code (35 ILCS 200\1-1 *et seq.*).

property used exclusively for charitable purposes within the meaning of 35 **ILCS** 200/15-65. Following submission of all evidence and a careful review of the record, it is recommended that the subject parcel remain on the tax rolls for the 1994 assessment year.

FINDINGS OF FACT

1. The Department's jurisdiction over this matter and its position therein are established by admission into evidence of Dept. Gr. Ex. No. 1 and Dept. Ex. No. 2.

2. The subject parcel is located at 3214 West Haddon, Chicago, IL 60651. It is a 10 unit, 9,250 square foot building identified by Permanent Index Number 16-02-411-019. Dept. Group Ex. No. 1.

3. Ogiela rents each of the ten units to single-parent families. *Id.* Nine of the ten units contain two bedrooms. Tr. p. 23. Each of these units occupies approximately 1,000 square feet. Tr. pp. 31-32. The remaining unit contains three bedrooms and occupies 1,200 square feet. Tr. pp. 23, 32.

4. Ogiela bases the rent on the number of people in each apartment. Her tenants do not pay their own electric bills. Tr. pp. 25. However, they do pay for gas. *Id.*

5. Ogiela computes rent by allocating \$20.00 per person per month for the water bill, which her tenants do not pay on their own. Tr. pp. 25-26. Her rentals also include allocations for the electric bill and insurance. *Id.*

6. During the 1994 tax year, Ogiela rented seven of the two bedroom units for \$325.00 per month. Tr. pp. 23-24. She rented the

remaining two bedroom units for \$300.00 per month and the three bedroom unit for \$330.00 per month.

7. Ogiela allowed tenants to stay in their apartments for a period of time if their rent was past due. However, she evicted two tenants during the 1994 assessment year. Tr. pp. 24-25.

8. During the 1994 tax year, Ogiela received 31,060.00 in rental income as a result of such rentals. Applicant Ex. No. 6. Her expenses for the same period totaled to \$47,241.00. Said expenses were apportioned as follows:

A. Cleaning Apartments	-	\$2,180.00
B. Insurance	-	\$4,310.00
C. Supplies	-	\$1,900.00
D. Taxes	-	\$6,286.00
E. Utilities	-	\$18,615.00
F. Roof	-	\$9,000.00
G. Janitor & Scavenger	-	\$4,200.00
H. Cost of One Eviction	-	\$750.00

Id.

9. Ogiela formed an Illinois not-for-profit corporation, named "Evelyn Ogiela," May 14, 1990. Applicant Ex. No. 1. The purposes of the corporation, as reflected in its Articles of Incorporation, are to provide low income housing for women that are head of family, give educational scholarships, provide counseling for abused women and preach the word of God. *Id.*

10. The corporation has no capital stock or shareholders. Tr. p. 28; Applicant Ex. No. 3. It is exempt from Federal income tax

under Section 501(a) of the Internal Revenue Code as an organization described in Section 501(c)(3) of that statute. App. Ex. No. 10.

11. The corporation did not award any scholarships during the 1994 tax year. Tr. pp. 12-13.

12. Ogiela took title to the subject property, in her capacity as a private individual, in 1989. Dept. Group Ex. No. 1; Tr. p. 15. She held title pursuant to a trustee's deed which vested her with a beneficial interest in the subject property. App. Ex. No. 4.

13. The original deed was never recorded because it was lost or misplaced. App. Ex. No. 4. However, the parties executed a duplicate May 17, 1994. *Id.*

14. Ogiela's not-for-profit corporation assumed the entire beneficial interest in the subject property May 16, 1991. Applicant Ex. No. 9.

CONCLUSIONS OF LAW:

On examination of the record established this applicant has not demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from property taxes for the 1994 assessment year. Accordingly, under the reasoning given below, the determination by the Department that the above-captioned parcel does not qualify for exemption under 35 **ILCS** 200/15-65 should be affirmed. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

In furtherance of its Constitutional mandate, the General Assembly enacted the Property Tax Code, 35 ILCS 200/1-3 **et seq.** The provisions of that statute which govern disposition of the present matter are contained in Section 200/15-65. In relevant part, that provision states as follows:

... All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

(a) institutions of public charity;

(b) beneficent and charitable organizations incorporated in any state of the United States whose owner, and no other person, uses the property exclusively for the distribution, sale or resale of donated goods and related activities and uses all the income from those activities to support the charitable, religious or beneficent activities of the owner, whether or not such activities occur on the property.

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and, have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

In a line of cases dating to Methodist Old People's Home v. Korzen, 39 Ill.2d 149 (1968), Illinois courts have required applicants seeking charitable exemptions to prove that the property in question is owned by a charitable organization, and, that the property is exclusively or primarily used for charitable purposes. The Korzen court also established guidelines for determining whether a given applicant is a "charitable organization" within the meaning of Illinois law.

In Korzen, the Illinois Supreme Court adopted the following definition of "charity" in analyzing whether appellant's senior

citizen's home was exempt from property taxes under the Revenue Act of 1939:

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

39 Ill.2d at 157 (citing Crerar v. Williams, 145 Ill. 625 (1893)).

The Korzen court also observed that the following "distinctive characteristics" are common to all charitable institutions:

- 1) they have no capital stock or shareholders;
- 2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 3) they dispense charity to all who need and apply for it;
- 4) they do not provide gain or profit in a private sense to any person connected with it; and,
- 5) they do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

Id.

Here, Ogiela's not for-profit-corporation held tile to the subject property during the 1994 assessment year. The corporation's Articles of Incorporation (Applicant Ex. No. 1) indicate that its stated purposes are to provide low income housing for women that are head of family, give educational scholarships, provide counseling for abused women and preach the word of God. Such statements can provide

evidence that the titleholder is organized for charitable purposes as required by Section 200/15-65 and Korzen, *supra*. They not however, relieve Ogiela of her burden of proving that her operations are exclusively or primarily charitable. Korzen, *supra*.

A similar rationale applies to the corporation's exemption from federal income tax. Like the statements in her corporation's organizational documents, Ogiela's exemption from federal income tax (which applies *only* to her corporation), does not, in and of itself, establish that the subject property is actually used exclusively for charitable purposes. People ex rel County Collector v. Hopedale Medical Foundation, 46 Ill.2d 450 (1970). Moreover, while this exemption establishes that Ogiela's corporation is a "charity" for purposes of Sections 501(a) and 501(c)(3) of the Internal Revenue Code, those Sections do not preempt Section 200/15-65 or the other statutory provisions governing exemptions from real estate taxation. Consequently, neither this exemption, nor the statements contained in her corporation's organizational documents, are dispositive of her entitlement to exemption from 1994 real estate taxes. Therefore, the remaining analysis must focus on the extent to which Ogiela's operations are exclusively charitable.

In People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924) (hereinafter "Baldwin"), the Illinois Supreme court established the well-settled principle that "[i]f real estate is leased for rent, whether in cash or other form of consideration, it is used for profit." Baldwin at 140. Thus, "[w]hile the application of income to charitable purposes aids the charity, the primary use of [the parcel in question] is for [non-exempt] profit". *Id.*

Here, Findings of Fact 3 through 8 establish that Ogiela uses the subject parcel for no other purpose than leasing for rent. Accordingly, the principles set forth in Baldwin establish that it is not in exempt use. Furthermore, to the extent that Ogiela derives the subject property's operating income almost exclusively from rental payments which result from arm's length business transactions,² I conclude neither she nor her corporation derive their funds mainly from public and private charity as required by Korzen, *supra*.

Ogiela also evicts tenants for non-payment of rent. Evictions, by their very nature, lack the "warmth and spontaneity indicative of charitable impulse." Korzen, *supra* at 158. Thus, taking such action, if only on an occasional basis, strongly suggests that both Ogiela and her corporation operate more like for-profit businesses than beneficent institutions. It also establishes both Ogiela and her corporation do not dispense charity to all who need and apply for it as required by Korzen, *supra*. Therefore, neither entity is entitled to exemption from 1994 real estate taxes under Section 200/15-65.

In closing, I note that Ogiela argues that the subject property should be tax exempt in the same manner as a hospital. (Tr. p. 44). However, under current Illinois law, property of hospitals and health care organizations are not exempt from real estate taxation unless

². Ogiela testified, (at Tr. pp. 17-18) that the corporation's primary source of revenue is "income of the rents." She also testified that she contributed approximately \$11,000.00 of her own personal funds. (Tr. p. 19). Baldwin, *supra* establishes that leasing for rent is, by its very nature, a non-exempt business transaction. Accordingly, I conclude that Ogiela's contributions in furtherance of such transaction constitutes a business decision which does not, in and of itself, establish charitable operations.

they qualify as "charitable institutions" within the meaning of Section 200/15-65. See, Sisters of the Third Order of St. Francis v. The Board of Review of Peoria County, 231 Ill. 317 (1907); Highland Park Hospital v. Department of Revenue, 155 Ill. App.3d 272 (2d Dist. 1987); Chicago Osteopathic Properties Corporation v. Department of Revenue, 88 L 51164 (Circuit Court of Cook County, August 6, 1992); Lutheran General Health Care System et al v. Department of Revenue, 231 Ill. App.3d 652 (1st Dist. 1992). Insofar as the preceding analysis establishes that neither Ogiela nor her corporation qualify as "charitable institutions," her argument must fail.

WHEREFORE, for the reasons stated above, it is my recommendation that the subject parcel remain on the tax rolls for the 1994 assessment year.

Alan I. Marcus
Administrative Law Judge

Date